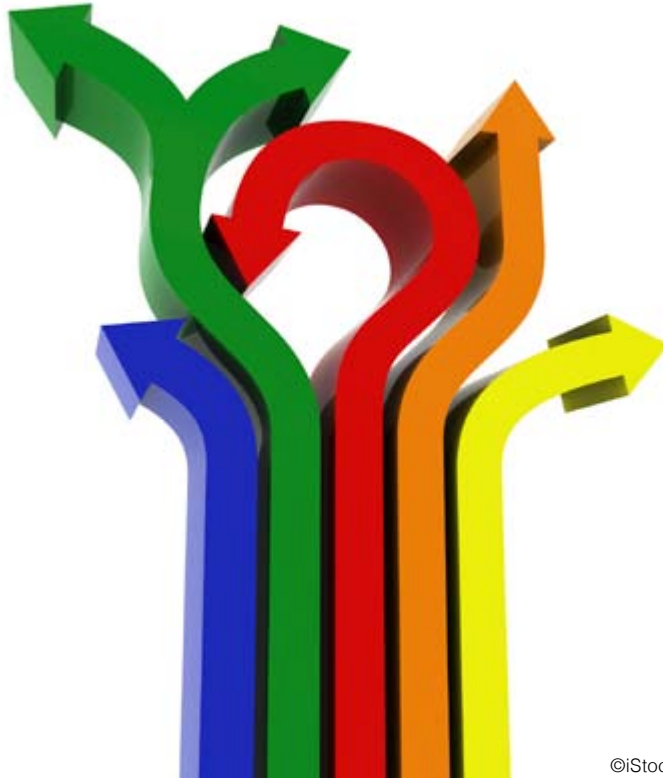


News & Views from the 50 States

## Against the Grain



©iStockphoto.com/rzdeb

November 17, 2014

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The next issue of Capitol Journal will be available on November 24th.

### Top Story

*Republicans won big in Congressional, state legislative and gubernatorial races, but voters also endorsed a number of ballot measures that were decidedly against the GOP grain.*

## SNCJ Spotlight

**Voters elect Republicans but display independence on ballot measures**

Beneath the crest of the mighty wave that carried Republicans to a near high water mark in the nation's statehouses, voters in 2014 displayed an independence that ran against the grain of GOP victories.

For Republicans, Nov. 4, 2014, was a banner day. The GOP took control of the U.S. Senate, widened its

## A Cannon Perspective



With Lou Cannon

comfortable majority in the U.S. House, captured 11 state legislative chambers previously controlled by Democrats and won four additional governorships while losing only one. Republicans now hold both state legislative houses in 30 states, their highest number since the 1920 elections ushered in a period of GOP dominance after World War I. They have a 31-18 edge over Democrats in governorships with Alaska, where an independent is leading, still undecided.

The election left Democrats in control of both legislative chambers in only 11 states, their worst standing since 1860 before the Civil War. Eight legislatures have divided partisan control. Nebraska, unicameral and non-partisan, is Republican in all but name.

But while voters were delivering legislatures to Republicans, they largely ignored the GOP party line — or any party line — on ballot measures. Voters passed 15 bond issues in five states, raised the minimum wage in four states and advised that it be increased in another, approved environmental measures in seven states, legalized recreational use of marijuana in Alaska, Oregon and the District of Columbia and sanctioned background checks of gun buyers in Washington State, where a deadly school shooting occurred 12 days before the election.

The votes on increasing the minimum wage, which Republicans for the most part oppose, were particularly instructive. Voters overwhelmingly approved minimum wage hikes in four states — Alaska, Arkansas, Nebraska and South Dakota — while sending Republicans to the U.S. Senate. In a fifth state, Illinois, voters approved an advisory measure recommending a minimum wage hike from \$8.25 to \$10 while replacing Democratic Gov. Pat Quinn, an outspoken proponent of the increase, with Republican businessman Bruce Rauner, who had a history of opposing minimum wage increases but eventually endorsed the advisory measure.

Voters were generous on bond issues, approving in California a record-high \$7.2 billion bond for state water supply infrastructure projects and in New York a \$2 billion bond for school technology. They displayed environmental consciousness, passing measures in Alaska, Florida, Hawaii, Louisiana, New Jersey and Rhode Island that allocated substantial sums to environmental projects. In Florida, 75 percent of voters approved a state constitutional amendment that over 20 years will designate an estimated \$18 billion for land acquisition to protect the state's land and water resources, including wetlands, forests, and fish and wildlife habitats.

Local voters also contributed to environmental protection. In California two counties banned hydraulic fracturing, known as fracking, the process by which

## The week in session

**States in Regular Session:** DC, IL, MI, NJ, OH, PR (Projected Adjournment 11/18), US

**States in Informal Session:** MA

**States in Veto Session:** IL

**States in Recess:** NY, VA "a"

**Special Sessions in Recess:** CA "b", DE "c", NJ, VA "a"

**States currently prefilming for 2015**

**Session:** CO, FL, KS, KY, MT, ND, NV, OR, TN, TX, VA, WY

**Adjourned Sessions:** AK, AL, AR, AR "a", AZ, AZ "a", CA, CA "a", CO, CT, DE, DE "b", DE "d", FL, FL "a", GA, HI, HI "c", IA, ID, IL "a", IL "b", IN, KS, KY, LA, MD, ME, MN, MO, MS, MS "a", MS "b", NC, NE, NH, NJ "a", NM, NV "a", OK, OR, PA, PR "a", PR "b", RI, SC, SD, TN, UT, VT, WA, WA "a", WA "b", WA "c", WI, WI "c", WV, WV "a", WV "b", WY

Letters indicate special/extraordinary sessions

— Compiled By JAMES ROSS  
(session information current as of 11/11/2014)  
Source: State Net database

oil and gas are extracted under high pressure. Environmental groups contend that the process contaminates the water supply. A third anti-fracking measure, in Santa Barbara County, lost because of its vague wording and heavy opposition spending by the oil industry. But in Denton, Texas, near the center of the nation's oil and gas boom, voters approved an anti-fracking measure by a 59-41 percent margin.

The state measures were the achievements of an electorate that was grayer, whiter and supposedly more conservative than the one that re-elected President Obama in 2012. On the face of it, the liberalism of voters on the minimum wage and the environment and their generosity on bond issues would appear to contradict their partisan actions as well as exit polls that showed skepticism about government spending.

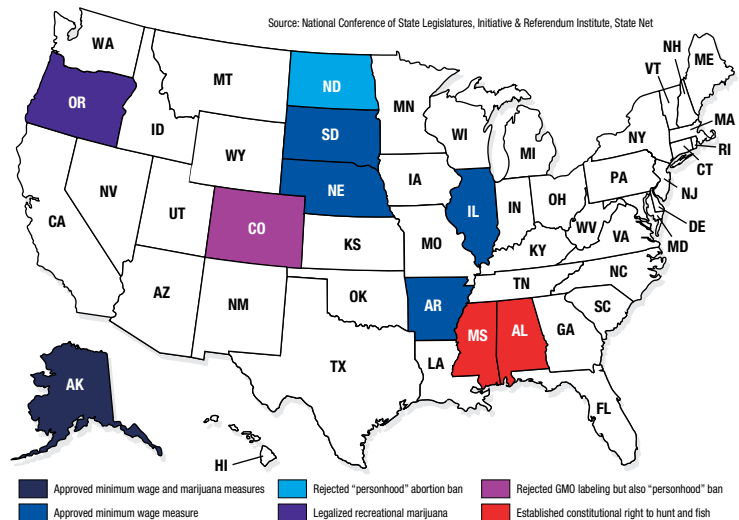
But the apparent contradiction underestimates voters, who tend to make their decisions on ballot measures on their merits without partisan reference, said Wendy Underhill, who tracks ballot measures for the nonpartisan National Conference of State Legislators.

**“The voters may deserve more credit for independent thinking than they are usually given.”**

“The voters may deserve more credit for independent thinking than they are usually given,” she said.

The 2014 midterms were the sixth year of a presidency, in which the party out of power has always done well. With unintended help from President Obama, who somewhat surprisingly said his policies were on the ballot, Republicans managed to make the congressional and state legislative contests — in some cases even the gubernatorial races — a referendum on the president. Political demographer Charlie Cook believes Democrats were also hurt by a public perception that the economy has not sufficiently recovered from the Great Recession.

## Bird's eye view



### Ballot measure voting bucks conservative trend

Voting on the initiatives on states' Nov. 4 ballots didn't follow the conservative trend that dominated the congressional and statehouse races. Voters backed liberal causes such as increasing the minimum wage in five states and legalizing the recreational use of marijuana in two states, while rejecting "personhood" abortion bans in two others. But voters also approved measures affirming a constitutional right to hunt and fish in two states and rejected measures requiring labeling of genetically modified food in two states.



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largely a matter for the courts. So, too, may be abortion. Since 2010, GOP-controlled states have imposed more than 200 restrictions on abortion. Tennessee may join the list of states with obstructive abortion rules on the basis of a ballot initiative approved in this year's election that will allow the legislature to impose additional restrictions. (Two other abortion-related measures on state ballots — defining a fetus as a person — were rejected by voters in Colorado and North Dakota.)

Beyond such hot-button issues, legislatures in 2015 will tackle issues such as education, cybersecurity and prison reform that do not easily break along party lines. The year after midterm elections is often productive in state legislatures, and 2015 should be no exception.

Voters demonstrated both independence and thoughtfulness in the 2014 elections. Perhaps legislators and governors of both parties will follow their lead in the year ahead.

— *By Lou Cannon*

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## Budget & taxes

**HIGH COURT CONSIDERS DOUBLE TAXATION ISSUE:** The U.S. Supreme Court heard arguments last week in a case involving a Maryland couple who sued that state over how it taxed the income they earned outside the state. The couple alleges Maryland's practice of offering only a partial tax credit on a portion of the out-of-state income residents earn — which is distributed to counties — amounts to unconstitutional double-taxation.

If the justices rule against Maryland, its counties might have to refund over \$190 million in taxes plus interest. But a ruling upholding the state's income tax system could have implications for the 42 other states with an income tax and which, unlike Maryland, offer full tax credits for income their residents earn elsewhere. As Joseph Henchman of the Tax Foundation put it, the majority of states that offer a deduction “probably do so because they think they have to, constitutionally.”

Experts say the question of whether states can tax income twice has never fully been tested but poses a challenge to the principle of free trade that has been an integral part of interstate commerce for two centuries.

“It's a fundamental, foundational question,” said Santa Clara University School of Law Professor Bradley W. Joondeph.

Helen Hecht, general counsel at the Multistate Tax Commission, a group that supports Maryland's tax policy, said a ruling in that state's favor probably wouldn't change much, given that states have offered the income tax credits at issue in the Maryland case without any constitutional or Supreme Court mandate to do so.

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— *Compiled by KOREY CLARK*

● anticipation of losing over \$3 million in state money over its stance on the state's new policy barring public assistance for undocumented immigrants. Portland and several other cities in the state have indicated they will continue to distribute General Assistance regardless of applicants' immigration status in spite of that policy. And Gov. Paul LePage (R) has said the state would withhold reimbursements to communities that defy the policy, which he says was necessary to bring the state into compliance with federal law. (PORTLAND PRESS HERALD)

**NV READYING APPEALS COURT:** The Nevada Commission on Judicial Selection began accepting applications on Nov. 5 for posts on the Nevada Court of Appeals. The court was established only the day before when the state's electorate voted 54 percent to 46 percent in favor of Question 1, after rejecting similar efforts to create a new appeals court four times in the past.

"Nevadans spoke up for justice today," said Supreme Court Justice James Hardesty.

The three-judge panel, which will be based in Las Vegas, could be ready to begin hearing appeals from the state's District Court as early as January. (LAS VEGAS SUN)

**POLITICS IN BRIEF:** Wealthy, liberal political donors began meeting last week to plan a new political strategy for electing more Democrats to state office and increase the party's voter base. The Democracy Alliance, a network of over 100 contributors, including billionaire George Soros, dubbed the postelection conference "To 2020 and Beyond: Our Progressive Vision" (USA TODAY). • Glen Bolin won a city alderman race in Poplarville, **MISSISSIPPI** this month by drawing a long straw. His opponent in the race, Stephanie Bounds, who drew the short straw, unsurprisingly plans to lobby lawmakers about doing away with the state's current method of settling tied runoff races — "by lot," flipping a coin or drawing straws — because she says it's archaic and disenfranchises voters (CLARION-LEDGER). • A total of 665 **NEW YORK** state and local government workers have a "211 waiver" allowing them to collect both a full-time salary and retirement payments, or "double dip," according to a report from the fiscally conservative Empire Center (POUGHKEEPSIE JOURNAL).

— *Compiled by KOREY CLARK*

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# Governors

## **NEW GOP GOVS PONDER CHANGING MEDICAID EXPANSIONS:**

**N** Since coming into being in 2010, 27 states and the District of Columbia have signed on to some form of Medicaid expansion as called for under the Affordable Care Act. The vast majority have come in states with Democratic



governors, though the lure of billions of dollars in federal funding to pay for expanding the joint state-federal health insurance program for the poor eventually convinced a handful of Republican governors to go along as well. But recent GOP gubernatorial wins in four states previously held by Democrats could foster changes to those programs, and possibly place expansion in some of those states in jeopardy. There is also new uncertainty in Arizona, where Gov. Jan Brewer (R) — one of the GOP governors mentioned above — has been replaced by fellow Republican Doug Ducey, an adamant ACA opponent.

None of the new Republicans has said they will definitely work to kill the expansions approved under their predecessors. But at least two, Arkansas Gov.-elect Asa Hutchinson and Illinois Gov.-elect Bruce Rauner, have said they would not have signed off on expansion if they had been in office at the time.

In a press conference held a few days after the election, Hutchinson said he had not had time to fully explore Arkansas's so-called "private option" plan that uses federal funding originally targeted for Medicaid expansion to instead subsidize private health care plans for people newly-eligible for the program. Fostered by current Gov. Mike Beebe (D), it was the first alternate plan in the country to receive federal approval. Hutchinson noted that while the program "clearly" had benefits, namely ensuring 200,000 mostly working poor Arkansans had access to health coverage, the plan also has "a cost aspect to it that I've said throughout the campaign needs to be measured."

Hutchinson said even supporters of the program want to see some changes enacted and that he wants to work with the new legislature "on how we handle that from a cost standpoint, whether it's extended, what the options are."

The governor, however, is not the final word. That belongs to Razorback State lawmakers, who narrowly endorsed the program in 2013 and 2014 but might not do so again. Renewal requires two-thirds of them to sign on, something that may not be realistic now that Republicans have gained even more seats in each legislative chamber.

New Govs. Charlie Baker of Massachusetts and Larry Hogan of Maryland have also indicated they will not challenge their states' Medicaid expansions, though Baker has said he would work to untether the Bay State program from the ACA. Massachusetts has had a working health benefits exchange and expanded Medicaid coverage since 2006 when then-Gov. Mitt Romney (R) signed legislation making it the first state in the nation to adopt those measures. That program, later dubbed "Romneycare," is often cited as the model for the ACA, itself later dubbed "Obamacare."

To date, Arizona Gov.-elect Doug Ducey has also said he will not seek to turn back the Grand Canyon State's expansion unless the federal government reneges on its commitment to fund at least 90 percent of its cost. He will, however, seek to obtain federal approval to alter it, in part by requiring beneficiaries to deposit money

## In case you missed it

Last Tuesday's elections produced a stunning GOP wave in both statehouses and governor's offices, leaving states under the most GOP control in almost 100 years.

In case you missed it, the story can be found on our Web site at

[http://www.statenet.com/capitol\\_journal/11-10-2014/html#sncj\\_spotlight](http://www.statenet.com/capitol_journal/11-10-2014/html#sncj_spotlight)

into health savings accounts. (HUFFINGTON POST, KAISER FAMILY FOUNDATION HEALTH NEWS, ARKANSAS ONLINE, WASHINGTON POST, USA TODAY)

**CUOMO VETOES PENSION BILL:** New York Gov. Andrew Cuomo (D) vetoed a bill last week that would have authorized state and municipal pension credits for peacetime military service. Current Empire State law provides up to three years' credit toward public employee pensions for military service during hostilities. The vetoed measure would have allowed veterans who served during peacetime to buy up to three years of pension credit for their retirement. Cuomo called the measure "an unfunded mandate" on local governments, creating \$57 million in near-term costs for those municipalities. In his veto message, Cuomo said the bill also disregarded recent pension reforms the state adopted, saying it would "run roughshod over systemic reforms carefully negotiated with the Legislature to avoid saddling local property taxpayers with additional, unmanageable burdens." (NORTH COUNTRY PUBLIC RADIO, SYRACUSE.COM)

**NIXON MAY USE GUARD TO QUELL VIOLENCE IN FERGUSON:** Missouri Gov. Jay Nixon (D) said the National Guard is part of a multi-agency response plan should more violence break out in the St. Louis suburb of Ferguson in the aftermath of a grand jury investigation into the shooting of an unarmed black teenager by a white Ferguson police officer on August 9. The grand jury's decision on whether the officer should be indicted for that shooting is expected this month.

"This is America. People have the right to express views and grievances, but they do not have the right to put fellow citizens and property at risk," Nixon said during a press conference last Tuesday. "Violence will not be tolerated."

Nixon said over 1,000 Missouri police officers have undergone more than 5,000 hours of new training to better equip them to handle protests in the event that the officer is not indicted. Nixon said law enforcement leaders have also spent many hours conferring with faith leaders, civil rights groups and other community organizations to help stave off more of the rioting that enveloped Ferguson after the shooting. (NEW YORK TIMES, USA TODAY)

## In the hopper

At any given time, State Net tracks tens of thousands of bills in all 50 states, the US Congress and the District of Columbia. Here's a snapshot of what's in the legislative works:

**Number of 2014 Prefiles last week:** 23

**Number of 2015 Prefiles last week:** 608

**Number of Intros last week:** 456

**Number of Enacted/Adopted last week:** 85

**Number of 2014 Prefiles to date:** 21,700

**Number of 2015 Prefiles to date:** 5,915

**Number of 2014 Intros to date:** 84,861

**Number of 2013 Session Enacted/Adopted overall to date:** 40,747

**Number of 2014 Session Enacted/Adopted overall to date:** 28,093

**Number of bills currently in State Net Database:** 174,160

— Compiled By JAMES ROSS  
(measures current as of 11/11/2014)  
Source: State Net database



**GOVERNORS IN BRIEF: OHIO** Gov. John Kasich (R) appointed Dr. Mary DiOrio, the Buckeye State's former epidemiologist, to serve as its new medical director. She will serve as part of a two-person leadership team alongside Richard Hodges, former director of the Ohio Turnpike Commission. DiOrio was the state's point person in developing a policy for handling Ebola (COLUMBUS DISPATCH). • **ARKANSAS** Gov. Mike Beebe (D) announced he would grant a pardon to his son Kyle for a 2003 felony drug conviction. The younger Beebe paid a fine and served three years of supervised probation. Gov. Beebe said he agreed to the pardon after Kyle, now 34, wrote him a letter asking for "a second chance at life." He noted he has also granted over 700 pardons during his two terms (CNN.COM).

## Upcoming elections

(11/14/2014 - 12/05/2014)

11/25/2014

**Mississippi Special Runoff**  
Senate District 17

— Compiled by RICH EHISEN

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# Hot issues

**CRIME:** A federal judge strikes down a 2005 **ARIZONA** law that made it a state crime to smuggle immigrants. The ruling from U.S. District Judge Susan Bolton said the law infringes on federal authority over immigration issues. Gov. Jan Brewer (R) has not indicated if the state will appeal the decision (LOS ANGELES TIMES).

**SOCIAL POLICY:** The U.S. Supreme Court lifts a stay issued by Justice Sonia Sotomayor of a lower court's ruling that declared a **KANSAS** law barring same-sex marriage to be unconstitutional. Sunflower State Attorney General Derek Schmidt appealed U.S. District Judge Daniel Crabtree's ruling to the Court, prompting Justice Sotomayor to stay the ruling. But the full court lifted the stay last Wednesday, making Kansas the 33<sup>rd</sup> to allow same-sex marriages to proceed (LOS ANGELES TIMES, NEW YORK TIMES). • A federal court strikes down **SOUTH CAROLINA's** ban on same-sex marriage. U.S. District Judge Richard Gergel said the Palmetto State is bound by a recent 4<sup>th</sup> U.S. Circuit Court of Appeals ruling that struck down a similar law in VIRGINIA. Gergel stayed his order for one week to give state officials a chance to file an appeal (CHARLOTTE OBSERVER).

— Compiled BY RICH EHISEN

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# Once around the statehouse lightly

**R**UN, JERRY, RUN: On a recent edition of HBO's "Real Time with Bill Maher," the host railed against the horrible plague of ageism, which he called "the last acceptable prejudice in America." Case in point, he said, is that coming off a serious beatdown from Republicans on Nov. 4 Democrats ought to be promoting California's "paddle a little to the left, paddle a little to the right" Gov. Jerry Brown for president in 2016 instead of presumptive nominee Hillary Clinton. But Dems won't do so because at age 76 Brown is considered too old for the job, regardless of the fact he has led the Golden State back from fiscal oblivion. Or that he is also a physical fitness freak whose daily routine includes running three miles, something Maher doubts rotund New Jersey Gov. and drooling presidential aspirant Chris Christie could do. "Christie's only exercise," Maher said, is "pumping the nacho cheese dispenser." Ouch!

**BETTER OFF DEAD:** Yes, it's true that Reeps kicked the bejeebers out of Dems in the recent election. But there are places where just being a Democrat is enough to carry the day against any kind of GOP wave. For instance, voters in Federal City, Washington have apparently re-elected state Rep. Roger Freeman, who decisively defeated his Republican challenger, Jack Dovey. We're sure that Freeman would be very happy about this but for one small problem: he is deceased. Yes, as Reuters reports, Freeman succumbed to cancer shortly before the election and after ballots were mailed out. Washington voting is done entirely by mail, leaving voters seemingly with only one choice. Alas, they didn't see it that way. If the current count holds Dems will get to appoint someone to fill the seat for one year, after which voters will choose someone else to serve the last year of Freeman's term.

**SO SUE ME:** Sneaky add-ons into bills that otherwise have nothing to do with said add-on is one of the oldest tricks in the political playbook. A prime example this month comes from Pennsylvania, where the *Pittsburgh Tribune-Review* reports that a group of lawmakers has filed suit to block a bill that allows individuals and pro-gun groups — read the NRA — to sue local governments that try to regulate firearms in their communities, even if those groups or individuals have no connection to the community they are suing. Nice. And how did such a law come to be? It was added on to another measure that increases penalties for mopes convicted of stealing copper and other valuable metals. Sounds like they are not the only sneaky thieves operating in the Keystone State.

— By RICH EHISEN



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